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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,319	07/06/2001	Priscilla M. Tramontana	PPC-800	6598

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EXAMINER

DELACROIX MUIRHEI, CYBILLE

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 05/21/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,319

Applicant(s)

TRAMONTANA, PRISCILLA M.

Examiner

Cybill Delacroix-Muirheid

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Ginocchio, 4,237,591.
2. Claims 19-23 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginocchio, supra in view of Engle 3,819,405 and Hooper et al., 4,343,783.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Amendment

The following is responsive to Applicant's amendment received Feb. 26, 2002 (Certificate of Mailing, Jan. 18, 2002).

No claims are cancelled. No new claims are added.

Claims 6-11 and 19-23 are currently pending.

Applicant's amendment to the abstract has been entered.

If applicant desires priority under 35 U.S.C. 119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph.

The previous claims objections set forth in paragraphs 3-4 of the office action mailed Oct. 24, 2001 **are withdrawn** in view of Applicant's amendment and the remarks contained therein.

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However, Applicant's arguments traversing (1) the previous claim rejection under 35 USC 102(b) and (2) the previous claims rejection under 35 USC 103(a), set forth in paragraphs 5-9 of the office action mailed Oct. 24, 2001 have been considered but are not found to be persuasive.

Said rejections are maintained essentially for the reasons given previously in the office action mailed Oct. 24, 2001 with the following additional comment:

Rejection under 35 USC 102(b):

It is Applicant's position that the Examiner has failed to establish that Ginocchio discloses each and every element of the claimed invention as required in an anticipation rejection. Specifically, Applicant contends that Ginocchio does not disclose a sanitary napkin containing an essential oil in an effective amount to provide for both a pleasant aroma and an antimicrobial effect in order to inhibit antimicrobial growth. Additionally Applicant was not able to locate where in the Ginocchio patent there is disclosed a "liquid perfume" and therefore has requested the Examiner to point out where in the patent such information is disclosed.

Said arguments have been considered but are not found to be persuasive.

Concerning the disclosure of the liquid perfume, the Examiner respectfully refers Applicant to column 2, lines 18-27.

With respect to Applicant's arguments regarding the "effective amount" of essential oil, the Examiner respectfully submits that Applicant is arguing (as well as claiming) the effective amounts **functionally**, i.e. an effective amount to inhibit microbial growth. Since Applicant is claiming amounts functionally, one of ordinary skill in the art must turn to the specification

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where, at page 5, lines 3-5, Applicant describes the amount of essential oil that should be present in the claimed sanitary napkin. However, Applicant has not clearly argued how this amount desired by Applicant is not disclosed or is distinguished over the amount disclosed in the prior art. Applicant has not specifically argued, on the record, how the claimed amounts of essential oil differ from the amounts of essential oil in the prior art. Absent such arguments, the amounts of essential oil in the prior art may inherently contain the claimed antimicrobial function.

It is for these reasons that the rejection is maintained.

Rejection under 35 USC 103(a):

It is Applicant's position that the claims are patentable over Ginocchio in view of Engle and Hooper because Ginocchio does not disclose a sanitary napkin containing an essential oil in an effective amount to provide for both a pleasant aroma and an antimicrobial effect in order to inhibit antimicrobial growth. Moreover, Applicant contends that Engle and Hooper do not cure the deficiencies of Ginocchio because they, too, do not teach an effective amount of essential oil to inhibit antimicrobial growth. Also, Engle teaches away from the claimed invention by disclosing the addition of a separate antimicrobial compound (2-ethyl hexyl salicylate) to the sanitary napkins.

Said arguments have been considered but are not found to be persuasive.

Concerning Applicant's arguments regarding the "effective amount" of essential oil, the Examiner respectfully submits that Applicant is arguing (as well as claiming) the effective amounts **functionally**, i.e. an effective amount to inhibit microbial growth. Since Applicant is

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claiming amounts functionally, one of ordinary skill in the art must turn to the specification where, at page 5, lines 3-5, Applicant describes the amount of essential oil that should be present in the claimed sanitary napkin. However, Applicant has not clearly argued how this amount desired by Applicant is not disclosed or is distinguished over the amount disclosed in the prior art. Applicant has not specifically argued, on the record, how the claimed amounts of essential oil differ from the amounts of essential oil in the prior art. Absent such arguments, the amounts of essential oil in the prior art may have an antimicrobial effect.

With respect to the Engle reference, Applicant's remarks addressing the Engle's disclosure of an additional antimicrobial agent are noted; however, the Examiner relied upon Engle for the teaching that the use of cedar oil in sanitary napkins is disclosed.

The Examiner respectfully submits that the prior art rejections are maintained because the record is not clear as to how the claimed amounts of essential oils differ or are distinguished from the amounts in the prior art.

Conclusion

Claims 6-11 and 19-23 stand rejected.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

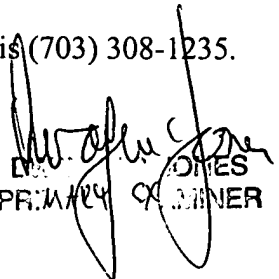
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

CDM



May 19, 2002



DEACRON-MUIRHEID
PRIMARY EXAMINER